

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC. and
NICE SYSTEMS LTD.,

Plaintiff,

v.

Civil Action No. 06-311-JJF

WITNESS SYSTEMS, INC.,

Defendant.

**WITNESS SYSTEMS, INC.'S RESPONSE TO PLAINTIFFS NICE SYSTEMS, INC.
AND NICE SYSTEMS LTD.'S (COLLECTIVELY, "NICE") "OBJECTIONS TO
WITNESS' CLAIM CONSTRUCTION MATERIALS"**

Defendant Witness Systems, Inc. ("Witness Systems") files this Response to Plaintiffs NICE Systems, Inc. and NICE Systems Ltd.'s (collectively, "NICE") "Objections to Witness' Claim Construction Materials" (D.I. 213) filed July 23, 2007 ("NICE's Objections").

I. RESPONSE

NICE raises four objections to the filing of Witness Systems' *Markman* hearing presentation materials with the Clerk of the Court on July 3, 2007 (D.I. 193). The first three objections are simply an excuse for NICE to reargue matters that are before the Court. The fourth objection is unsupported by the law and contradicted by NICE's own actions.

A. Objections 1-3

NICE's first three objections amount to disagreements with the content of Witness Systems' claim construction arguments. NICE had ample opportunity to present its claim construction arguments in the parties' Joint Claim Construction Chart, Opening and Response

briefs, and at the June 26 *Markman* hearing. Rather than provide a detailed rebuttal to NICE's objections, Witness Systems will rest on its arguments previously submitted to the Court.

NICE's disagreement with the arguments urged by Witness Systems in its *Markman* hearing presentation materials provides no basis to strike the filing of those materials. If disagreement with an opposing parties' arguments could justify striking pleadings from a Court's docket, our adversarial system of justice would not work.

B. Objection 4

Witness Systems filed with the Clerk of the Court a copy of the same materials provided, by hand, to both the Court and NICE's counsel at the *Markman* hearing. This filing was necessary to make a record of the materials provided to the Court at the hearing. NICE complains that Witness Systems' filing of those materials was untimely, but NICE filed a copy of its own presentation materials with the Court on July 6, 2007 (D.I. 196), ten days after the June 26 hearing. NICE has cited no authority that supports the striking of Witness Systems' demonstrative exhibits, and its own actions contradict its "objections."

Dated: July 25, 2007

FISH & RICHARDSON P.C.

By: /s/ Kyle Wagner Compton

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2007, I electronically filed with the Clerk of Court the foregoing WITNESS SYSTEMS, INC.'S RESPONSE TO PLAINTIFFS' NICE SYSTEMS, INC. AND NICE SYSTEMS LTD. (COLLECTIVELY, "NICE") "OBJECTIONS TO WITNESS' CLAIM CONSTRUCTION MATERIALS" using CM/ECF which will send electronic notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery.

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I also certify that on July 25, 2007, I have sent by electronic mail and U.S. First Class Mail, the document(s) to the following non-registered participants:

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